THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5590 of 2007

22.3.2007

Between:

Akarapu Narsimha Swamy, S/o.Akarapu Kumaraswamy

… Petitioner

AND

The District Panchayat Officer, Mahabubnagar District
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5590 of 2007

ORDER:

The petitioner is statedly owner of a house bearing Nos.19-33 & 19-34 situated on the main road at Nagarkurnool town. When the fourth respondent, immediate neighbour of petitioner, commenced construction and dug a large pit in premises bearing Nos.19-36 & 19-37 for construction of cellar, the petitioner filed a suit being O.S.No.125 of 2006 against fourth respondent on the file of the Court of the Junior Civil Judge, Nagarkurnool. In the said suit, he also filed an application being I.A.No.312 of 2006 for *ad* interim injunction and the learned Junior Civil Judge granted order of *status quo*. The petitioner then approached the first respondent, who by an order dated 18.10.2006 allegedly directed the Panchayat Secretary to stop further construction by fourth respondent. He alleges that in spite of the same, respondent No.3, who is in collusion with the fourth respondent, did not take any action to stop illegal and irregular construction by the fourth respondent. Therefore, the present writ petition is filed seeking a direction to third respondent to stop further construction by fourth respondent.

After hearing learned Counsel for the petitioner and learned Standing Counsel for the Gram Panchayat, this Court is of considered opinion that the writ petition is not maintainable. It is well settled that the remedy under Article 226 of the Constitution of India cannot be availed simultaneously along with alternative remedy. A reference may be made to **K.S.Rashid & Son v. Income-tax Investigation Commission**[1], **Carl Still G.m.b.H. v. State of Bihar**[2] and **Bombay Metropolitan Region Development Authority, Bombay v. Gokak Patel Volkart Ltd.**[3]. When the petitioner has already obtained order of *status quo* in an interlocutory application filed under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 (CPC) nothing prevents him to file contempt application under Order XXXIX Rule 2A of CPC against the fourth respondent. Liberty is reserved to the

petitioner to do so.

The writ petition is misconceived and is accordingly dismissed. No costs.

March 22, 2007. (**V.V.S.RAO, J**)

YS

---

[1] AIR 1954 SC 207

[2] AIR 1961 SC 1615

[3] (1995) 1 SCC 642